

**REMARKS**

**I. Status of Claims**

Claims 50-68 are currently pending. Claims 50 and 68 have been amended herein to recite that the claimed composition does not comprise an additional ingredient chosen from functionalized organic polymers, functionalized silicone polymers, and precursors thereof. Support for the above amendment can be found in the specification as originally filed.

Specifically, although the present specification discloses the use of various conventional additives, including a number of functionalized organic polymers (e.g., paragraph [040]), functionalized silicone polymers (e.g., paragraph [037]), and precursors thereof, it is clear that the addition of such ingredients is *optional*. See e.g., paragraph [037] ("It is . . . *possible* to use . . ."), paragraph [040] ("*For example*, a composition of the present invention *may* comprise . . ."), and paragraph [045] ("A composition according to the invention *may* also comprise . . . . Needless to say, a person skilled in the art will take care to select this or these *optional additional compound(s)* . . .") (emphasis added).

According to M.P.E.P. § 2173.05(i), "[a]ny negative limitation or exclusionary proviso must have basis in the original disclosure. **If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims,**" citing *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) (emphasis added). As *Johnson* makes abundantly clear, *ipsis verbis* support in the specification is not required to expressly exclude optional components in the claims.

Here, the present amendment merely excludes from the claims components that are expressly recited as optional in the specification. Thus, even if the terms “functionalized organic polymers” and “functionalized silicone polymers” are not set forth per se in the specification, one of ordinary skill in the art would recognize a number of such compounds in, for example, paragraphs [037], [040], and [045]. As a result, a genus including each set of species may be excluded by amendment, without raising any issue of new matter herein.

## II. Rejection under 35 U.S.C. § 102(e)

Claims 50-68 remain rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,352,699 to Mondet et al. (“Mondet”).

According to the Examiner in the Final Office Action, formula 1A of Mondet is the same compound claimed in the present application and “reads on the claimed method of ‘protecting the hair’ since the patent discloses that even after several washes using water and shampoo, the initial waviness of the hair is retained.” Final Office Action at 3. The Examiner further stated in the Final Office Action that “application of the compound to the keratin (nail) is [the] same, therefore the method claimed in claim 53-59 and the method claimed in claim 69 [sic, claim 68] in the body of the claim [‘effective to reduce the brittleness of the human nails’] is inherent.” *Id.* Applicants respectfully disagree.

Mondet discloses a cosmetic or dermatological composition comprising **at least** an organometallic compound (which may have the formula  $M(OR_1)_n$ ) and **“at least one** functionalized organic polymer or a precursor of said polymer, or **at least one** functionalized silicone polymer or a precursor of said polymer.” Mondet, column 2, lines

33-50 and claims 1-25 (emphasis added). Further, all of the representative examples of Mondet illustrate the use of a functionalized organic or silicone polymer, or precursor of a functionalized organic or silicone polymer in combination with the organometallic compound. Mondet, columns 8-10, examples 1-6.

Present independent claims 50 and 68 however, recite, *inter alia*, "[a] method of protecting and/or strengthening a keratin material comprising applying to said keratin material a composition comprising at least one organometallic compound... wherein said composition **does not comprise** an additional ingredient chosen from functionalized organic polymers, functionalized silicone polymers, and precursors thereof." (emphasis added). As Mondet requires the presence of **both** a functionalized organic/silicone polymer or precursor thereof **and** an organometallic compound, Mondet fails to teach each and every element of the present claims. Indeed, the present claims now require the opposite of that taught by Mondet, i.e., that the composition does **not** contain the functionalized additional ingredient. Thus, there can be no anticipation under 35 U.S.C. § 102.

In response to Applicants' position as stated, the Examiner, in the Advisory Action mailed July 13, 2005, asserts that there is no support at page 13 or page 15 for the limitation "wherein said composition does not comprise an additional ingredient chosen from functionalized organic polymers, functionalized silicone polymers, and precursors thereof." Applicants respectfully disagree. As discussed above, *In re Johnson* clearly indicates that components which are recited as optional in the specification may be expressly excluded from the claims, and such a negative limitation in the claims does not require word-for-word support in the specification. Here, the

ingredients being excluded by the present amendment, specific examples of which are listed at pages 14-17 of the specification, are *optional*.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

**III. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

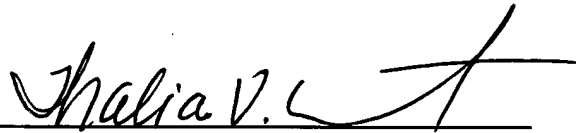
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: August 2, 2005

By:

A handwritten signature in black ink, appearing to read "Thalia V. Warnement", written over a horizontal line.

Thalia V. Warnement  
Reg. No. 39,064